

**HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 41
RULES RELATING TO GENERAL PROVISION
SUBTITLE 3**

HARBORS DIVISION

PART 1

COMMERCIAL HARBORS AND TARIFF

§19-41-2 Definitions; general. As used in this part, unless the context clearly indicates otherwise:

"Abandoned vehicle" means any vehicle left unattended in a vehicular parking area for more than seventy-two hours without permission from the harbor master.

"Authorized emergency vehicle" means any vehicle of the police and fire departments of the city and county of Honolulu, and the counties of Maui, Hawaii, Kauai, or of a federal agency having similar functions of law enforcement and fire protection; private vehicles owned by police officers designated and approved by the chief of police of the respective county to be used by the police officers in the performance of their duties; and any federal, state, and county ambulance.

"Authorized tow vehicle" means any vehicle specially constructed for towing vehicles, other than trucks and farm or road tractors, which is designated as an authorized tow vehicle by the chief of police of the respective county.

"Berth" means any place where a vessel is made fast to, moored, anchored, laid alongside of, or docked at a pier, wharf, quay, bulkhead, landing, dolphin, anchorage, mooring, or another vessel, in the shore waters, navigable streams, harbors, ports, and roadsteads of the State.

"Cargo" means the load, freight, or burden of a vessel exclusive of the vessel's stores, passengers, fuel, and ballast.

"Cargo storage charge" means a charge assessed for space occupied by cargo at a wharf in areas pursuant to section 19-44-78. (As defined herein, the term "cargo storage charge" is intended to be substantially equivalent to the term "terminal storage" as set forth in 46 CFR 533.6(d)(5), as that term existed on June 1, 1993.)

"Chief, harbors division" or "chief" means the chief of the harbors division of the department of transportation, and any person acting for the chief under the chief's authority.

"Container berth" means any berth at a state dock or pier designated by the State for preferential use by vessels primarily loading or unloading shipping devices.

"Container cargo" means any and all cargo carried and contained in a shipping device.

"Curb loading zone" means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers, materials, or freight.

"Demurrage" means a charge assessed against cargo and shipping devices remaining on any portion of wharf, pier, or terminal area after expiration of free time and for which no proper assignment of cargo storage space has been made pursuant to section 19-44-78. (As defined herein, the term "demurrage" is intended to be equivalent to the term "wharf demurrage" as set forth in 46 CFR 533.6(d)(4), as that term existed on June 1, 1993.)

"Department" means the department of transportation of the State of Hawaii.

"Diamond Head terminal container complex" means all the land and improvements under the control of the department on the easterly side of Honolulu Harbor entrance channel exclusive of pier 2, berths B and C, the pier 2 transit shed and adjacent open storage areas, all as delineated by the director.

"Director" means the director of the department of transportation and any person acting for the director under the director's authority.

"District manager" means any persons appointed to that office by the director, and includes the district manager's authorized representative. The district managers for the Hawaii, Maui, and Kauai districts of the harbors division shall also be the harbor masters for the commercial harbors within their respective districts.

"Division" means the harbors division of the department of transportation of the State of Hawaii.

"Dockage" means the charge assessed against a vessel (other than small craft which pay mooring fees) when:

- (1) Berthed at or made fast to a wharf, dolphin, or other structure; or
- (2) Lying alongside of or tied up to a vessel which is made fast to or is lying alongside of a wharf, dolphin, or other structure; or,
- (3) Not tied up to or lying alongside of a wharf but using one by means of boats, rafts, lighters, or otherwise.

"Flammable liquid" means any liquid which burns or any liquid which gives off flammable vapors (as determined by the Tagliabue open cup tester, as used for test of burning oils) at or below a temperature of eighty degrees Fahrenheit.

"Free time" means that period of time allowed cargo and containers to remain on any portion of a wharf, pier, or terminal area for purposes of:

- (1) Assembling and loading the same on board a vessel; or
- (2) Unloading the same from a vessel and enabling its receipt at a wharf without assessment of demurrage or cargo storage charges.

"Gross receipts" means the aggregate amount of the gross income and gross proceeds of sale derived from a trade or business wherein a vessel is used in any manner to promote the trade or business, computed in accordance with the provisions of Chapter 237, HRS, less commissions retained by sales agents.

"HHMO" means the Honolulu harbor master's office.

"Harbor master", "commercial harbor manager", or "harbor agent" means any person appointed to that office by the director and vested with the operational control of a state commercial harbor. The responsibilities of a harbor master, commercial harbor manager or harbor agent include, but are not limited to, enforcing rules, mooring and berthing of ships, control of water and air pollution in the harbor, orderly flow of cargo, allocation of storage space, and the movement of vessels into, out of, and within the harbor.

"Incoming domestic overseas cargo" means that incoming cargo from any United States port (except inter-island cargo or intra-island cargo as defined in this section) which does not require customs clearance.

"Incoming foreign overseas cargo" means that incoming cargo arriving from ports for which customs clearance is mandatory.

"Inter-island cargo" or "intra-island cargo" means passengers or cargoes handled between wharves of the islands of Niihau, Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe, and Hawaii. It does not include passengers or cargoes in transit from an overseas port travelling between these islands without intermediate off-loading to a wharf of one of these islands. It does include passengers or cargoes from an overseas port which were off-loaded at a wharf on one of these islands and is being transshipped to another wharf on one of these islands.

"Inter-island vessel" or "intra-island vessel" means a vessel predominantly used in the transporting of inter-island cargo or intra-island cargo.

"Island agricultural products" means fresh agricultural products grown in Hawaii, including but not limited to pineapple, sugar, fruits and vegetables, coffee, hay, whole eggs, juices (not in retail can), macadamia nuts, onions and potatoes, milk, livestock, meats and poultry, flowers, and flowering and ornamental plants.

"Mooring" means a berth.

"Outgoing overseas cargo" means that outgoing cargo to any United States port (except inter-island cargo or intra-island cargo as defined in this section) or any foreign port.

"Outside berth" means a berth occupied by a vessel which moors or makes fast to another vessel which is moored or made fast to a wharf, dolphin, or other structure.

"Overall length of vessel" means the length of a vessel in linear feet using whichever is greater of United States Customs House measurements as they existed on June 1, 1993, Lloyd's Register measurements as they existed on June 1, 1993, or the American Bureau of Shipping measurements as they existed on June 1, 1993. When measurements are not available from these registers, and not on vessel documents, the length will be determined by the harbor master.

"Oversea" or "overseas" means any port or place not on one of the following islands: Niihau, Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe, and Hawaii.

"Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of, and while actually engaged in, loading or unloading of either freight or passengers.

"Parking meter" means a mechanical device located or installed within or upon a curb, sidewalk area or parking area, which records a certain number of minutes or hours, by the use of a time measuring device, for which parking privileges have been extended to persons depositing money and activating the device.

"Parking meter stall" means any stall which is within a parking meter zone, adjacent to a parking meter and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street or parking area adjacent to or adjoining the parking meters.

"Part" means chapters 19-41 to 19-50, Hawaii Administrative Rules.

"Passenger" means every person other than the master and members of the crew

or other persons employed on board a vessel in the business of that vessel.

"Port entry fee" means the charge made against a vessel upon entering a port to partially cover the expense of administering and operating that port and maintenance of harbors, channels, berthing areas, and basins.

"Rental" means the transaction by which space is held out under an agreement for a negotiated or predetermined sum to be paid at fixed intervals. Excluded from this definition are dockage, wharfage, moorage, etc. Included are office space, storage space in sheds or open areas, parking stalls or areas, locker space, etc.

"Rules" means the rules governing state commercial harbors under the jurisdiction of the department, including but not limited to Honolulu, Kewalo Basin, Barbers Point, Hilo, Kawaihae, Kahului, Kaunapali (if applicable), Kaunakakai, Nawiliwili, and Port Allen, and private installations or construction within commercial harbor boundaries as set forth in this part.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times as being set apart as a safety zone.

"Sand Island terminal container complex" means all the land and improvements under the control of the department on the northwest quarter of Sand Island.

"Service boat" means a self-propelled small craft commercially engaged to provide a function needed by the maritime community, such as water taxi, diving platform, etc., operating within or in and out of a harbor.

"Shipping device" means a non-self-propelled, rigid, non-disposable, returnable, cargo-carrying device with or without wheels, enclosed or otherwise and includes but is not limited to any container, trailer, chassis, platform, specially constructed skid, pallet, mount, or combination thereof, and which is designed to be transported integrally as one unit directly and mechanically between vessels and piers so as to eliminate intermediate rehandling and storage of cargo and having overall dimensions of eight feet maximum width, thirteen feet six inches maximum height, and ten feet minimum length.

"Smaller commercial vessels" means those vessels sixty-five feet or more but less than three hundred feet long, or the metric equivalent thereof, used for any commercial venture, including fishing, charter, or cruise, but not engaged in overseas operations or in the transporting of any overseas cargo.

"Stand" or "standing" means the halting of a vehicle, whether occupied or not, other than for the purpose of, and while actually engaged in, loading or unloading passengers, materials, or freight.

"State" means the State of Hawaii.

"State commercial harbor" or "state port" means a harbor under the jurisdiction of the department which has been designated for trade and other commercial activity and includes but is not limited to the following: Honolulu, Kewalo, Barbers Point, Nawiliwili, Port Allen, Kahului, Kaunapali (if applicable), Kaunakakai, Kawaihae, and Hilo.

"State container freight station" or "SCFS" means an area of state property, open or enclosed, paved or otherwise, designated for the loading or emptying of cargo into or out of the shipping devices.

"State container yard" or "SCY" means an area of state property designated for the marshalling and temporary storage of shipping devices.

"Stop" means the complete cessation of movement.

"Stopping" means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer.

"Tanker" means a self-propelled cargo vessel, specially designed and equipped with tanks for the transportation of oil, gasoline, molasses, or other liquids, fluids, and free flowing materials, and which is actually transporting therein fuel oil, diesel oil, lubricating oil, gasoline, jet fuels, benzene, kerosene, naphtha, liquid propane gas (LPG), liquid natural gas (LNG), or other flammable petroleum products or like products as cargo.

"Tanker barge" means a cargo vessel that is not self-propelled but is specially designed and equipped with tanks for the transportation of oil, gasoline, molasses, or other liquids, fluids, and free flowing materials, and which is actually transporting therein fuel oil, diesel oil, lubricating oil, gasoline, jet fuels, benzene, kerosene, naphtha, liquid propane gas (LPG), liquid natural gas (LNG), or other flammable petroleum products or like products.

"Tankerlike vessel" means a cargo ship primarily designed to carry ordinary freight but equipped with additional bunkers or compartments in which it is actually transporting fuel oil, diesel oil, lubricating oil, gasoline, jet fuels, benzene, kerosene, naphtha, liquid propane gas (LPG), liquid natural gas (LNG), or other flammable petroleum products or like products in excess of its own requirements.

"Ton", when used to compute wharfage or demurrage, means:

- (1) By weight, two thousand pounds;
 - (2) By volume, forty cubic feet;
 - (3) By board-foot measurement in case of lumber, four hundred eighty board feet;
- or
- (4) In metric system, .9072 metric ton.

"Tow zone" or "tow away zone" means any area where the parking, stopping, or standing of vehicles is prohibited entirely or during specific hours by the department.

"Traffic control device", "traffic control barricade", or "traffic control signal" means every barrier, obstruction, or block placed upon or across any road or sidewalk, or all signs, signals, pavement markings, traffic cones, and devices placed or erected by the department for the purpose of regulating, warning, guiding, or limiting the passage of vehicles or pedestrians over any area under the jurisdiction of the department.

"Transshipment cargo" means cargo arriving and unloaded at a wharf in this State for further shipment to its ultimate destination on, and by terms of, a through bill of lading. Transshipment cargo is of the following types:

- (1) Overseas: from the United States to another country through Hawaii, or from one country to the United States or another country through Hawaii;
- (2) Domestic: from the United States to one island port via another island port or to the United States from one island port via another island port; or

(3) Inter-island: from one island port to another via one of the islands.

"Unit load" means a shipping device together with its cargo not exceeding sixty thousand pounds overall weight. (Note: weight figures used herein are for the purpose of reporting wharfage only. Compliance with pier, highway, or equipment weight and height limitations must be met.)

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including power boats, ships, tugs, cruise boats, small craft, smaller commercial vessels, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, house boats, floating gear, and any and all other watercraft.

"Vessels under repair" means vessels undergoing major repair. This does not include typical voyage repairs, preventive or routine maintenance nor does it include periodic inspections by the U.S. Coast Guard, the American Bureau of Shipping or other similar agencies. The repair envisaged must be of sufficient magnitude to require the assistance of an outside (independent) repair facility and should be documented by invoices or billings to ships or agencies for the work performed.

"Wharf", "pier", or "terminal area" means any area of state property set aside to the department by the governor pursuant to law and devoted to servicing of vessels, including the receiving and discharging of cargo and passengers from or onto vessels.

"Wharfage" means the charge or toll assessed against all cargo and fuel:

(1) Passing or conveyed over, onto or under any wharf, pier, or terminal area; or

(2) Passing or conveyed to or from a vessel while such vessel is:

(A) Made fast to a wharf, pier, or terminal area; or

(B) Moored in any slip, channel, basin, or canal; or

(C) Made fast to another vessel which is made fast to a wharf or moored in any slip, channel, basin or canal.

(Wharfage is solely the charge on cargo for the use of the wharf, slip, channel, basin, or canal, and does not include charges for any other activity or service.)

[Eff 5/20/82; am 12/5/83; am 12/20/85; am 11/7/91; am 10/23/06; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Note: Definitions for handling, loading and unloading, usage, checking and heavy lift as set forth in 46 CFR 533.6(d) (6, 7, 8, 9, and 10) have not been included in these rules since such services are not provided by the department.